

E-filed on 9/8/06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE CYGNUS TELECOMMUNICATIONS
TECHNOLOGY, LLC, PATENT
LITIGATION

No. MDL-1423
This Order Applies to All Actions

THIS ORDER RELATES TO:
All Actions

C-02-00142 RMW
C-02-00145 RMW
C-02-05437 RMW
C-03-03594 RMW
C-03-03596 RMW
C-03-03378 RMW
C-03-04003 RMW
C-03-05758 RMW
C-04-01791 RMW
C-04-03001 RMW
C-04-03365 RMW
C-04-04247 RMW
C-04-04359 RMW
C-06-03843 RMW
C-06-04295 RMW

**ORDER DENYING CYGNUS'S MOTION TO
EXCLUDE EVIDENCE CONSIDERED
DURING REEXAMINATION**

25 Plaintiff Cygnus Telecommunications Technology, LLC moves for summary judgment that
26 references considered in the recent reexamination of the patents-in-suit may not be relied upon by
27 the defendants here when asserting invalidity of the patents-in-suit. It is unclear from the motion the
28 precise basis on which Cygnus seeks to exclude the evidence. Proceedings before the U.S. Patent

1 and Trademark Office are not binding on the courts.¹ *See Quad Env'tl. Techs. Corp. v. Union*
2 *Sanitary Dist.*, 946 F.2d 870, 875-76 (Fed. Cir. 1991). If the basis of Cygnus's motion is evidentiary
3 rules, its timing is governed by the prior orders scheduling claim construction and related summary
4 judgment motions, and any such motion to exclude evidence will be considered at the November 20,
5 2006 hearing. Cygnus's motion is denied, though without prejudice to refiling as to any specific
6 evidence which defendants seek to introduce at any evidentiary hearing.

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DATED: 9/8/06

RONALD M. WHYTE
United States District Judge

28 ¹ Cygnus clarified at oral argument that it was not seeking to exclude the evidence on the basis that
the USPTO proceedings bound this court.

1 **A copy of this order was mailed on _____ to:**

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11 Counsel for plaintiff is responsible for ensuring that involved attorneys not on the above service list
12 receive a copy of this order, if necessary, and shall inform the court of any omissions.
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